against him, so as to reach this property, real and personal, received by him under the will. Under these statutes of New York, no actions survive except such as are for wrongs to property rights and interests. Neither of these sections of that article of the Maryland Code extend to or cover any wrong done to any property of the plaintiffs, or would give them any right of recovery against Henry W. Slocum, Sr., for anything else than his personal conduct, as director, in the management of the corporation, without reference to any amount of the property of the corporation to be affected, or making the right of recovery proportional to the amount. The cause of action is of entirely a personal character, depending entirely upon the personal conduct of the director, as such, in creating the liability. The consequences of this conduct may effect a right of recovery which would result in property to the plaintiffs, but the action is not founded upon any such effect to any other property than such as may be acquired by such a recovery. In such cases, under similar statutes, the cause of action would not seem to survive. Read v. Hatch, 19 Pick. 47; Winhall v. Sawyer's Estate, 45 Vt. 466; Zabriskie v. Smith, 13 N. Y. 322; Stokes v. Stickney, 96 N. Y. 323; Hegerich v. Keddie, 99 N. Y. 258, 1 N. E. 787; and Witters v. Foster, 23 Blatchf. 457, 26 Fed. 737. Upon these authorities, without attempting to cite all, or nearly all, of those that bear upon this question, the bill, which sets out no other ground of action against Henry W. Slocum, Jr., seems to be insufficient. Demurrer sustained.

FISHER et al. v. GRAVES et al.

(Circuit Court, S. D. New York. May 25, 1897.)

CORPORATIONS—LIABILITY OF DIRECTORS.

A director of a corporation is not liable for the misconduct of co-directors, not participated in by him as a wrongdoer, and a bill which seeks to fix upon a director liability for negligent acts of the board, but does not charge him personally with any neglect, charging only neglect by the board of directors, without mentioning him, and alleging that information showing the character of their acts was accessible to all the directors, is insufficient.

Camillus G. Kidder, for plaintiffs.
William B. Hornblower, for defendants.

WHEELER, District Judge. This suit is like that of Railroad Co. v. Graves, 80 Fed. 588, as to the making of loans to stockholders of the American Casualty Insurance & Security Company of Baltimore City, except that the plaintiffs are alleged to be so receivers and assignees of the property and rights of action of the corporation as to represent it; and the bill also alleges great loss to the corporation by reason of these loans, and:

"Seventeenth. That the said loans, and each thereof, were not only illegal, and in direct contravention of the statutes of said state, and expressly prohibited by the charter of said corporation, as has been hereinbefore set forth, but the same constituted investments of the corporate funds which were un-

suitable to its business, unreasonably hazardous, insufficiently secured, and such as no ordinarily prudent man, endeavoring conscientiously to discharge his duties as director of a corporation, would or could have sanctioned or approved, and that the facts with respect thereto, and establishing the impropriety, in a commercial sense, thereof, were either directly known to, or were readily accessible to, all of said directors, including said defendants and said Henry W. Slocum, and could have been ascertained by them by the exercise of such reasonable vigilance and activity as was imperatively demanded of them by their obvious obligation as such directors."

This case has also now been heard upon the demurrer of the defendant Henry W. Slocum, Jr.

The same considerations by which the cause of action in that case, upon the statute quoted there, did not survive, apply also here; and for the same reason the cause of action, so far as created by the statutes, is also held not to survive here. But, upon the allegations here, a wrong to the property of the corporation by negligence of some of the directors in making the loans resulting in loss is alleged; and the question here is whether such a wrong is so alleged, as to the director Henry W. Slocum, Sr., as to survive against his estate, and be chargeable upon his estate and property distributed to the defendant Henry W. Slocum, Jr. This part is like a common-law action for the negligence of this director. At common law one director does not seem to be liable for the misconduct of co-directors not participated in, as a wrongdoer, by him. Briggs v. Spaulding, 141 U. S. 132, 11 Sup. Ct. 924. In that case, Mr. Chief Justice Fuller said:

"They cannot be held responsible for losses resulting from the wrongful acts or omissions of other directors or agents, unless the loss is a consequence of their own neglect of duty, either for failure to supervise the business with attention, or in neglecting to use proper care in the appointment of agents."

The allegation against the director Henry W. Slocum, Sr., quoted from the bill, does not charge him personally with any neglect in either of these respects, but merely charges neglect by the directors, without mentioning him, and, as to him, says they were either known to, or readily accessible to, all of the directors, including him, and could have been ascertained by them by the exercise of such reasonable vigilance and activity as was demanded of them by their obligation as directors. This form of allegation does not even charge knowledge, but only that the facts could have been ascertained by the exercise of reasonable vigilance. This seems to be far short of any allegation of such negligence on his part as would make him liable. Therefore the bill alleges nothing as to this part of the case calling for any answer by the defendant Henry W. Slocum, Jr. **Demurrer sustained.**

LOUDON v. SPELLMAN.

(Circuit Court of Appeals, Eighth Circuit. April 12, 1897.)

No. 773.

1. TAX SALES—FORFEITURES—REDEMPTION FROM STATE.
The statute of Arkansas (Sand. & H. Dig. § 4596) relating to redemption of lands forfeited for nonpayment of taxes, by application to the commissioner of state lands, applies only to lands which remain in the hands of the state, and not to those which have been sold or donated by the state.

2. SAME—REDEMPTION FROM DONEE OR PURCHASER.
The statute of Arkansas (Sand. & H. Dig. § 2595) providing that no action shall be maintained for the recovery of lands forfeited for nonpayment of taxes against a purchaser or donee of the state, without a previous affidavit of tender to such person of the amount of taxes paid and the value of improvements made by him, does not apply where a bill in equity is filed for the redemption of lands by one claiming an undivided share thereof. In such a case a tender is impracticable, and the right must be determined upon equitable principles.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

Charles Cummings Collins and C. S. Collins, for appellant.
Samuel R. Allen, for appellee.

Before SANBORN and THAYER, Circuit Judges, and LOCHREN, District Judge.

LOCHREN, District Judge. The bill of complaint in substance alleges that complainant is the owner in fee of an undivided five-ninths of the tract of 80 acres of land described in the bill, deriving his title from his grandfather, who died testate in 1841, and through the complainant's mother, who was one of the devisees under the will of the grandfather, and heir of another devisee, and who died in 1873, when the complainant was less than two years old. The bill also avers the sale of the land to the state of Arkansas, June 10, 1873, for the delinquent taxes of 1872, amounting, with penalty, to $43.20, which sale is alleged to have been void, because it included a tax for interest on levee bonds, assessed at 16 cents per acre, instead of being assessed upon a valuation of the land, as required by the constitution of the state of Arkansas, and because of irregularities stated. It avers also that the county clerk, after expiration of the period of redemption, certified the tract to the state land commissioner, who placed the same on record, and offered it for sale or donation, as the property of the state, and that on December 18, 1875, one J. Redwood procured a certificate of donation of said tract from the land commissioner, and made proof of improvements, and obtained a donation deed of the tract in due form; and that after his death his heirs transferred their title and the possession of the tract to defendant, who has since been in possession of the land; that complainant arrived at full age on the 22d day of November, 1892, and that he had no means of knowing the amount of taxes that may be due the defendant, in order to make tender of the same; and he prays that he may be permitted to

pay such taxes as may be due the defendant, and that he may be allowed rent, and have writ of possession, and that the donation deed may be declared a cloud on his title, and removed as such, and for general relief. A general demurrer to the bill, alleging want of equity, and that complainant has an adequate remedy at law, and that the bill does not show that complainant had filed with the clerk of the court an affidavit of tender to the defendant of all taxes, interest, and the value of improvements, was sustained by the circuit court, on the ground that complainant had a complete and adequate remedy at law by applying to the commissioner of state lands to redeem the lands in controversy, under the provisions of section 4596 of Sandels & Hill's Digest, which reads as follows:

"All lands and town or city lots, or parts thereof, which have been or may hereafter be forfeited to the state for non-payment of taxes, which belong to minors, femmes covert, persons of unsound mind, and persons in confinement at the date of forfeiture, may be redeemed by such persons by application to the commissioner of state lands within the limitation now prescribed by law, and upon the terms and in the manner now provided by law, or that may hereafter be prescribed by law."

Section 6615 of the same Digest provides that redemption from tax sales may be made by minors, insane persons, etc., within two years after the expiration of such a disability. Section 2595 of the same Digest provides that no person shall maintain an action for the recovery of any lands, or for the possession thereof, against a person holding such lands under a purchase at a tax sale, or purchase from the state of land forfeited for the nonpayment of taxes, or person holding the land under a donation deed from the state, unless before issuing the writ he shall file in the office of the clerk of the court in which the suit is brought an affidavit setting forth that the claimant has tendered to the person holding such land, his agent or legal representative, the amount of taxes first paid for said lands, with interest thereon from the date of payment thereof, and all subsequent taxes paid by the purchaser, with interest thereon, and the value of all improvements made on such land by the purchaser, his heirs, assigns, or tenants, after the expiration of the period allowed for the redemption of lands sold for taxes, and that the same have been refused. From the reading of these several provisions of the Arkansas statutes, it seems quite clear that the complainant could not have redeemed the land in controversy by applying to the commissioner of state lands, under the provisions of section 4596 of Sandels & Hill's Digest, above quoted, and that such section only applies to the case of lands which remain forfeited to the state for nonpayment of taxes. In such case only the state is interested in the matter of the delinquent taxes, and consequent forfeiture, and the land commissioner, on behalf of the state, can certify the redemption on the terms prescribed by law. But when such lands have been purchased from or donated by the state, the state ceases to be interested in the matter of the delinquent taxes, and only the purchaser or donee, or persons holding under and through him, have such interest; and section 2595 then applies. The state land commissioner has no longer jurisdiction, nor any data upon which to act. He cannot determine upon the value of improvements, for instance, nor issue any process to put the redemptioner in possession

of the land. The complainant therefore had no remedy in this case by means of application to the state land commissioner.

This is a bill to redeem, and a redemption of land through the intervention of a court is equitable in its nature, its effect being, ordinarily, to devest an outstanding legal title, upon the payment of what is due to the holder of such title. In Arkansas a donation deed is prima facie evidence of good title in the donee. Radcliffe v. Scruggs, 46 Ark. 96. And the plaintiff's suit to redeem is an affirmance of the tax title, and an election to defeat it by complying with the law governing such case, and the right of minors to redeem, may, in that state, be enforced in equity. Bender v. Bean, 52 Ark. 132, 12 S. W. 180, 241. The most serious question is whether the bill to redeem can be maintained without filing the affidavit of tender provided for by section 2595, Sand. & H. Dig., above referred to. The language of that section forbids the maintenance of an action to recover the lands, or for the possession thereof, without filing such affidavits of tender. The theory seems to be that such tender of itself effects the redemption, so that the redemptioner may thereupon maintain an action of ejectment, and he is not allowed to maintain that kind of action without such affidavit of tender. The section does not, by its terms, forbid the maintenance of a suit to redeem. And the supreme court of Arkansas holds that suits to redeem may be maintained, where that right remains because of the minority of the plaintiff, in cases where actions by the same plaintiffs for the recovery of the land have failed. Sims v. Cumby, 53 Ark. 418, 14 S. W. 623; Anthony v. Manlove, 53 Ark. 423, 14 S. W. 624. Even if such tender could be held requisite in ordinary cases, where the redemptioner claimed the entire land, and would become entitled to the whole upon paying the amount of all taxes, costs, interest, and the value of improvements, it would be impracticable, in a case like this, where the complainant claims only an undivided five-ninths of the land, and has the right to redeem only that five-ninths, and there is no existing right of redemption in the owners of the other four-ninths interest. He ought not to be compelled to pay the whole amount of such taxes, interest, and costs, and the entire value of all the improvements, as a condition to the exercise of his right to redeem his undivided partial interest in the land. Neither could he take from the defendant, by such redemption, his right to the four-ninths, in respect to which there is no outstanding right of redemption, and to which the complainant has no claim of title. And if it be a fact, as alleged, that the original tax sale was void because of including taxes not levied in accordance with the provisions of the constitution, that may effect the liability of the complainant to pay amounts which are in the nature of penalties. Douglass v. Flynn, 43 Ark. 398. Section 2595 of said Digest is not applicable to a case of this kind. It must be settled upon principles of equity, making practicable the existing right of redemption, and adapted to the unusual circumstances of the case. The decree appealed from is reversed, with costs, and the cause remanded for further proceedings.